



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/154093

PRELIMINARY RECITALS

Pursuant to a petition filed December 13, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on February 04, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly reduced the Petitioner's supportive home care (SHC) hours effective December 18, 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Evie LaShay
Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County. She is 63 years old and resides in her own apartment.
2. Petitioner's diagnoses include nerve paralysis in lower extremities and right shoulder injury.

3. On November 28, 2011, the agency used the In-Home Assessment Tool (IHAT) to assess the Petitioner's need for 179 hours/month of supportive home care.
4. On November 20, 2013, the Petitioner had an annual Family Care (FC) review at her home. The reviewer used the IHAT to assess the Petitioner's need for supportive home care and personal care hours. The IHAT assessed Petitioner's need for supportive home care and personal care at 79 hours/month.
5. On December 3, 2013, the agency completed the Resource Allocation Decision (RAD) Tool. The agency determined the Petitioner's supportive home care and personal care would be reduced to 98 hours/month.
6. On December 13, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.
7. On December 16, 2013, the Petitioner fell and injured her leg.
8. On January 15, 2014, the IHAT was updated. The agency calculated the Petitioner's need for supportive home care and personal care hours as 135 hours/month.

DISCUSSION

The Family Care program, which is supervised by the Department of Health Services, is designed to provide appropriate long-term care services for elderly or disabled adults. Whenever the local Family Care program decides that a person is ineligible for the program, or when the CMO discontinues an ongoing service in the service plan, the client is allowed to file a fair hearing request. Because a service reduction is sought here, the petitioner appropriately sought a fair hearing for a further, de novo review of the CMO decision. Wis. Admin. Code §DHS 10.55(1).

The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; communication aids and interpreter services; counseling and therapeutic resources; daily living skills training; day services and treatment; home health services; home modification; home delivered and congregate meal services; nursing services; nursing home services, including care in an intermediate care facility for the mentally retarded or in an institution for mental diseases; personal care services; personal emergency response system services; prevocational services; protective payment and guardianship services; residential services in an RCAC, CBRF or AFH; respite care; durable medical equipment and specialized medical supplies; outpatient speech; physical and occupational therapy; supported employment; supportive home care; transportation services; mental health and alcohol or other drug abuse services; and community support program services.

Wis. Admin. Code §DHS 10.41(2). Supportive home care services are included in the list of covered services in the statutory note above.

The agency has developed an In-Home Assessment Tool (IHAT) to allow case managers to consistently determine the number of hours required by each recipient. The screening tool allots a specific amount of time in each area the recipient requires help, which the reviewer can then adjust to account for variables missing from the screening tool's calculations. The agency in this case, after meeting with petitioner and assessing her capabilities, used the IHAT along with the RAD process to determine that 135 hours per month is warranted for Petitioner's current condition and needs.

The Petitioner's testimony at hearing with regard to her current needs is largely consistent with the needs assessed by the agency. The only discrepancies or areas of dispute that were described are as follows:

- The agency allowed 10 minutes/day for 1 application of lotion. The Petitioner testified that she requires lotion 2x/day.
- The agency allowed 10 minutes/week for 1 linen change. The Petitioner testified she would like her linens changed 2x/week.
- The agency was unaware that Petitioner is doing daily range of motion exercises. The Petitioner testified that she needs assistance with the exercises 1x/day, 5 – 10 minutes.
- The agency allowed for assistance with 1 meal/day based on Petitioner's report that she eats just 1x/day. The Petitioner testified that sometimes she eats 2x/day.

In all other areas of activities of daily living, homemaking and personal care, the Petitioner's testimony with regard to her needs was consistent with the agency's determination based on the IHAT and RAD.

The Petitioner provided no evidence to support the need for an additional linen change each week. With regard to meals, the Petitioner's testimony was that she generally does not have the appetite for more than one meal each day. Occasionally, she does want to eat lunch. Based on the testimony of the Petitioner, I will allow for an additional 10 minutes/day (5 hours/month) for lotion and range of motion exercises.

CONCLUSIONS OF LAW

The Petitioner has demonstrated a need for 140 hours/month of supportive home care and personal care hours.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to adjust the Petitioner's supportive home care and personal care hours to 140 hours/month effective December 18, 2013. This action shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

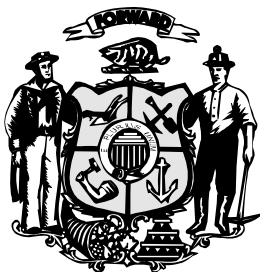
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of February, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 26, 2014.

Community Care Inc.
Office of Family Care Expansion